

REMARKS

Applicant hereby acknowledges the Examiner's withdrawal of the previous rejection of claims 3-5 and 14-15 under 35 U.S.C. 112. Applicant further acknowledges the Examiner's removal of the rejection of claims 1-8, 10-17, 19-20 and 22-24 under 35 U.S.C. 103 over Ohba, et al in view of Bradfute, et al., and the removal of the rejection of claims 9 and 18 under 35 U.S.C. 103 over Ohba, et al in view of Bradfute, et al. and further in view of Reading.

The Examiner has objected to the specification due to the absence of a claim 21. The claims have accordingly been renumbered. It is respectfully submitted that the objection is overcome.

Claims 1-8, 10-17, 19-20 and 22-24 stand rejected under 35 U.S.C. 103(a) over U.S. patent 6,605,344 to Ohba et al. in view of U.S. patent 5,069,946 to Moritani et al. It is respectfully submitted that the rejection is not well taken.

The present invention claims a packaged produce product comprising a package formed from at least one coextruded polyamide film comprising at least one first layer formed from a polyamide selected from the group consisting of nylon 6, nylon 66 and blends thereof, and at least one second layer of nylon 6,66 in contact with said first layer, said nylon 6,66 having a nylon 6 moiety and a nylon 66 moiety, and produce contained within said package, said package being formed from at least one polyamide film being heat sealed via said nylon 6,66 layer.

As previously submitted, Ohba, et al show adjacent nylon layers, i.e. a substrate which may be nylon 6 and a plastic film layer which may be nylon 6,66. However, as the Examiner recognizes, Ohba, et al do not suggest that these two layers may be co-extruded

to each other. They may only be laminated, coated dry laminated or extrusion coated one onto the other.

In the prior office action, the Examiner attempted to fill this void by pointing to Bradfute et al. for the proposition that co-extrusion is a known form of lamination. However, as previously submitted, this is incorrect. Coextrusion is not a known form of lamination, but rather is a distinctly different and unrelated technique used to combine film layers. Coextrusion is certainly known in and of itself. In coextrusion processes, each of two materials is at least partially molten or fluid and the two are brought together while in that form. Some molecules of each interlink with the other thus forming a strong interface. Lamination involves attaching two materials in sheet form.

In view of Applicant's comments in the response dated June 3, 2005 distinguishing coextrusion from lamination, the Examiner has withdrawn the prior rejections over Bradfute et al. However, the Examiner now applies U.S. patent 5,069,946 to Moritani et al., which presents the same flawed reasoning as Bradfute et al., similarly labeling co-extrusion as a lamination process. Accordingly, it is respectfully asserted that this again is incorrect for the same reasons as with the Bradfute et al. reference.

Within their own context, Moritani et al. classifies co-extrusion as a type of lamination. However, this is not the case with the instant invention nor is such the ordinary interpretation of these terms in the relevant art. It is an established principle of patent law that terms are presumed to have their ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003). Correspondingly, the ordinary and customary meaning of the term "coextrusion" does not encompass lamination. Likewise, the ordinary and customary meaning of the term "lamination" does not encompass coextrusion. Accordingly, it is respectfully submitted that while the Moritani reference may uniquely define coextrusion as a type of lamination

process, it is through the ordinary and customary meaning of the term coextrusion that the claims must be interpreted.

Both Applicant and the Examiner agree that Ohba, et al do not show coextrusion. Further, Moritani et al's fails to teach or suggest the coextrusion of a first layer of nylon 6, nylon 66 a blend thereof, and a second layer of nylon 6,66, in contact with said first layer, and thereby forming a package by heat sealing the polyamide film via said nylon 6,66 layer.

The Moritani et al. reference does describe the coextrusion of an EVOH-polyamide blend layer with a second layer that may be a nylon layer. However, this is very different than the claimed produce package wherein a layer of nylon 6, nylon 66 or blend of nylon 6 and nylon 66 is co-extruded with a layer of a nylon 6,66 copolymer. It is therefore submitted that the combination of Ohba et al and Moritani et al. does not suggest coextruding and contacting a first layer of nylon 6, nylon 66 or blends thereof, and a second layer of nylon 6,66.

With regard to claims 10 and 19, the mere fact that Ohba, et al shows a seal layer of nylon 6,66 does not mean that they inherently produce an *overall* film having a heat seal strength of the *overall* polyamide film of at least about 700 grams. This is especially true since Ohba, et al do not show first and second layers which are *coextruded*.

With regard to claims 11-12, 20 and 22, the showing of the sealing of a polyamide film to itself or two overlapping films by Ohba, et al is insufficient to reject these claims because the claims have a materially different structure, i.e. first and second layers which are *coextruded*. Likewise, with regard to claims 6-8 and 16-17, the thicknesses in and of themselves is insufficient to reject these claims because the claims have a materially different structure, i.e. first and second layers which are *coextruded*. For these reasons it is submitted that the rejection of claims 1-8, 10-17, 19-20 and 22-24 under 35 U.S.C. 103 over Ohba, et al in view of Moritani, et al. should be withdrawn.

Claims 9 and 18 stand rejected under 35 U.S.C. 103 over Ohba, et al in view of Moritani, et al. and further in view of Reading. It is respectfully asserted that this ground of rejection is not well taken. The arguments over Ohba, et al in view of Moritani, et al. are repeated from above. Reading is cited to show then making of perforations in a food package. However, Reading relates to a materially different film material. Reading only shows a perforated wrapper for food which is formed from non-resilient materials, i.e. paper, such as vegetable parchment, laminated to a metal foil such as aluminum. Reading does not show or suggest a perforated nylon film, much less a film composed of first and second nylon layers which are coextruded. It is submitted that the combination of Ohba, et al in view of Moritani, et al. and further in view of Reading is merely a reconstruction of the art in light of the Applicant's disclosure. For these reasons it is submitted that the rejection of claims 9 and 18 under 35 U.S.C. 103 over Ohba, et al in view of Moritani, et al. and further in view of Reading should be withdrawn.

The undersigned respectfully requests re-examination of this application and believes it is now in condition for allowance. Such action is requested. If the Examiner believes there is any matter which prevents allowance of the present application, it is requested that the undersigned be contacted to arrange for an interview which may expedite prosecution.

Respectfully submitted,



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I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office (FAX No. 571-273-8300) on October 19, 2005.



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